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April 3, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Response to the Telephone Electronics Corporation's Emergency Petition for Waiver -- PP Docket No. 93-253

Dear Mr. Caton:

Enclosed for filing please find the original and five copies of the Comments filed by the National Association of Designated Entity PCS Operators (NADEPO) in response to the Telephone Electronics Corporation's Emergency Petition for Waiver.

We appreciate your addressing any questions concerning this matter to the undersigned. Thank you.

Very truly yours,


Tara Kalagher Giunta

Enclosures

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As set forth in its Petition, TEC seeks to obtain a waiver from the Federal Communications Commission ("Commission") with regard to 47 C.F.R. § 24.709(a)(1) of the

Rules. The Petition provides that the waiver would apply only to the extent that the gross revenues of TEC's non-rural telephone company affiliates would be included in determining whether a rural telephone company satisfies the gross revenue cap of \$125 million in each of the last two calendar years. TEC's Petition specifically states that its participation in the C and F blocks would be limited to those Basic Trading Areas ("BTAs") where it provides services. TEC also requests that it be classified as a small business in order to be entitled to the 10 percent bidding credit and the installment payment plan.

NADEPO represents a wide range of designated entities which seek to bid for the C and F block licenses, and as such, NADEPO strongly supports the granting of TEC's waiver request. TEC's request is a limited exception to the broadband PCS auction rules originally established in the *Fifth Report and Order*¹ and the *Fifth Memorandum Opinion and Order*², and as set forth in Part 24 of the Commission's Rules. Specifically, TEC requests a limited waiver from the Commission's eligibility rules to selected rural BTAs³ where TEC currently provides telephone service, as well as recognition of TEC as a "small business", eligible for 10 percent bidding credits and installment payments. NADEPO is confident that the proposed waiver request strikes an equitable balance between TEC's unique circumstances and legitimate concerns, and the Commission's overarching statutory mandate of "ensuring that small businesses, rural telephone companies, and businesses owned by members of minority groups

¹ 9 FCC Rcd 5532 (1994).

² 10 FCC Rcd 403 (1994).

³ In its Petition, TEC stated that the exception only would apply to the following eight rural areas: BTA No. 246 Laurel, MS; BTA No. 186 Hattiesburg, MS; BTA No. 292 Meridan, MS; BTA No. 17 Anniston, AL; BTA No. 334 Opelika-Auburn, AL; BTA No. 146 Florence, AL; BTA No. 211 Jackson, TN; and BTA No. 83 Clarksville, TN.

and women are given an opportunity to participate in the provision of spectrum-based services."⁴

NADEPO believes that TBC's waiver request is consistent with the statutory mandate and the Commission's rules. To the extent that there are any additional exceptions included in the proposed waiver, NADEPO believes that it would be imperative for the Commission to provide interested parties an opportunity to review and comment. Moreover, if any such additional exceptions constitute substantive changes to the auction process, NADEPO believes it would be incumbent upon the Commission -- and NADEPO would, at that time, urge the Commission -- unilaterally to stay the awarding of broadband licenses from previously completed auctions until such time as a court of competent jurisdiction could rule on the legality of the entire auction process. In such event, the court would need to consider the legality of such substantive changes to the auction rules after key auctions already had been completed. Moreover, the court would be compelled by the irreparable harm wrought upon those businesses that relied, to their detriment, on the established rules and procedures, and which may be completely excluded from taking part in this next generation of technology.

⁴ 47 U.S.C. § 309(j)(4)(D).

NADEPO appreciates the Commission's efforts to resolve this issue with TEC.

We encourage the Commission to grant TBC's request for a waiver expeditiously, limited to the defined rural areas set forth in the Petition, the 10% bidding credit, and the installment plan.

Respectfully submitted,

**National Association of Designated
Entity PCS Operators**

By: 

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Its Attorneys

Dated: April 3, 1995

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of April, 1995, a copy of the foregoing Comments of NADEPO in Response to TEC's Emergency Petition for Waiver was served upon the persons listed below.

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